

Remarks:

In the specification, the first paragraph has been amended. In addition, amendments have been made to page 8, lines 6, 7, and 8; the charts on pages 9 and 10; the first paragraph of page 13, and the chart on page 13 below line 7.

The FTIR peaks at 1711 for Form U at Page 13 in the specification is a typographical error, and should be 1701. Support for the peak at 1701 instead of 1711 is found in Figure 31. Accordingly no new matter has been added.

In the claims, claims 5-41 and 43-60 have been withdrawn from consideration. Claim 1 has been amended for clarity. In addition, the DSC data has been removed from claim 1. Support for this amendment can be found on page 8 in Table I of the application. Claim 42 has been amended to remove the dependency on withdrawn claim 41. The scope of claim 42 remains unchanged. Claim 61 has been amended to recite a pharmaceutical composition comprising the nateglinide of claim 1. No new matter has been added to claim 61.

In response to the communication from the Office mailed November 9, 2005, applicants were required to elect one of Groups I-XIV. The Applicants provisionally elect, with traverse, to prosecute the subject matter of Group I, claims 1-4 and 42. The Applicants reserve the right to file divisional applications directed to the non-elected subject matter of the other groups.

This election is made with traverse because it is believed that the claims can be regrouped into a single group. As the Examiner is aware, there are two criteria for a restriction requirement: (A) the inventions must be independent or distinct as claimed; and (B) there must be a serious burden on the Examiner. "If the search and examination of all the claims in an application can be made without serious burden, the examiner must examine them on the merits, even though they include claims to independent or distinct inventions." M.P.E.P. § 803.

The Applicants respectfully request that all of the claims in Groups I-XIV be examined together. All the claims are sufficiently similar to make it possible to examine these claims without serious burden, with minimal search and extensive overlap of art. Groups I-XIV encompass polymorphic forms of nateglinide. Since all groups encompass crystalline forms of nateglinide, the art relevant for one class is likely to be highly relevant for the other classes as

Appl. No. 10/622,999
Amdt. Dated January 30, 2006
Reply to Office Action of November 9, 2005


well. The Applicants believe that examination of all of the claims in Groups I-XIV together would expedite prosecution of the present case.

If there are any issues outstanding after consideration of this election, the Examiner is invited to contact the undersigned to expedite prosecution of this case.

Respectfully submitted,

KENYON & KENYON LLP

Date: January 30, 2006

By: 
Payam Moradian
Reg. No. 52,048

KENYON & KENYON LLP
One Broadway
New York, NY 10004
Telephone: (408) 975-7500
Facsimile: (212) 425-5288

CUSTOMER NUMBER 26646